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Dr. Rajendra Singh
Chairman & President

May 11, 2010

Hon. Julius Genachowski
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band (WT Docket No. 07-293)

WRITTEN EX PARTE COMMUNICATION

Dear Chairman Genachowski:

Just last week, Clearwire Corporation ("Clearwire") certified to the Commission that it is now providing service utilizing Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") facilities to 50 million Americans.¹ As President and CEO of Horizon Wi-Com LLC, a Wireless Communications Service ("WCS") licensee, I urge that the Commission take note of this development as it considers the appropriate performance requirements to impose on WCS licensees, as the parallels between WCS and BRS/EBS are striking.

Like WCS, BRS/EBS was designated as a Fixed and Mobile service, but was subject to obsolete technical rules that effectively precluded the deployment of ubiquitous mobile broadband services. Like WCS, the BRS/EBS licensees sought relief from the Commission, demonstrating that those obsolete technical rules were unduly restrictive and providing an alternative regulatory regime that better served the public interest by freeing the spectrum for mobile services.² And, just like the Commission is poised to do for WCS later this month, in June 2004 the Commission modified its Part 27 rules to facilitate the widespread deployment of mobile broadband services utilizing BRS/EBS spectrum.³

Clearwire has done a remarkable job in developing and deploying, essentially from scratch, a new 4G network that is poised to provide viable competition to incumbent wireless and wired service providers. The marketplace has given Clearwire every incentive to reach as many Americans as possible as quickly

¹ See Letter from Cathleen A Massey, Clearwire Corporation Vice President, Regulatory Affairs and Public Policy, to Marlene H. Dortch, FCC Secretary, WT Docket Nos. 08-94 and 05-63 (filed May 7, 2010).

² See "A Proposal For Revising The MDS and ITFS Regulatory Regime," Wireless Communications Ass'n Int'l, Nat'l ITFS Ass'n and Catholic Television Network, RM-10586 (filed Oct. 7, 2002).

³ Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004).

as possible, and Clearwire has risen to that challenge. Yet even today, almost six years after the BRS/EBS rules were changed, Clearwire serves substantially less than one-third of the population in its spectrum footprint. This is not a criticism of Clearwire – again, it has done yeoman's service in pulling together all of the myriad components (equipment, cell sites, network design, backhaul, back-office billing, customer care and other capabilities, etc.) that are necessary for a newly-built network to succeed. What Clearwire's experience over six years since the BRS/EBS rule changes tells us, however, is that even with a licensee's best efforts, developing a viable network, whether at 2.5 GHz or at 2.3 GHz, takes time.

As I believe the Commission is truly serious about promoting widespread deployment of mobile offerings by WCS licensees, it must take the lessons learned from Clearwire's experience over the past six years to heart. Admittedly, Clearwire faced challenges that we will not face, but we will face challenges (including a far more challenging economic climate and aeronautical mobile telemetry coordination requirements) that Clearwire was not subject to. The important point is that new network builds cannot happen overnight, and expecting WCS licensees to serve 40% of their service areas within just thirty months of adoption of new rules, or else lose their license, is not realistic. The WCS Coalition's proposal, under which WCS licensees would be afforded five years to cover 35% of the population of their service area (more than Clearwire has done, and in less time), and seven and one-half years to service 70%, strikes a more appropriate balance.⁴ If this proposal is adopted, along with the WCS Coalition's proposed "keep what you use" policy, the Commission will afford WCS licensees a fighting chance to succeed in the mobile broadband marketplace.

Respectfully,



Dr. Rajendra Singh

cc: Hon. Michael J. Copps
Hon. Robert M. McDowell
Hon. Mignon Clyburn
Hon. Meredith Attwell Baker
Ruth Milkman
Julius Knapp
Office of the Secretary

⁴ See Reply Comments of WCS Coalition, WT Docket No. 07-293, at 8 (filed May 3, 2010) ("were the Commission to adopt the technical and service rules proposed in the *Technical Public Notice*, resolve the pending renewal and substantial service matters promptly, exclude the populations residing within an MAT coordination zone *and* adopt a "keep what you use" policy that promotes investment (as discussed below), it would be acceptable to require a WCS license to provide mobile or fixed point-to-multipoint service to 35% of the population of its authorized service area within five years of the effective date of new rules, and 70% of the population of its authorized service area within seven and one half years.").